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8 **UNITED STATES DISTRICT COURT**
9
10 **EASTERN DISTRICT OF CALIFORNIA**

11 DANIEL JEFFERS,

12 Petitioner,

13 v.

14 TRATE,

15 Respondent.

Case No. 1:23-cv-00571-EPG-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS FOR LACK OF
JURISDICTION

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE

16
17 Petitioner Daniel Jeffers is a federal prisoner proceeding *pro se* with a petition for writ of
18 habeas corpus pursuant to 28 U.S.C. § 2241. In the instant petition, Petitioner challenges a
19 sentence imposed by the United States District Court for the Southern District of Georgia. As
20 this Court does not have jurisdiction to entertain the instant petition pursuant to the savings
21 clause of 28 U.S.C. § 2255(e), the undersigned recommends dismissal of the petition.

22 **I.**

23 **BACKGROUND**

24 Petitioner is currently incarcerated at the United States Penitentiary in Atwater,
25 California. (ECF No. 1 at 2.)¹ On April 12, 2023, Petitioner filed the instant federal petition for
26 writ of habeas corpus pursuant to 28 U.S.C. § 2241 concerning “jail credits.” (*Id.* at 1.) Petitioner
27 contends that he is missing ten months and thirteen days of credit from May 28, 2019, when he

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 was transferred from the Georgia Department of Corrections to the custody of the United States
2 Marshal Service, to April 9, 2020, when he was sentenced. Petitioner argues that the sentencing
3 court failed to recognize its authority to adjust Petitioner's sentence or depart downward under
4 the United States Sentencing Guidelines. (ECF No. 1 at 3, 6-8.)

5 **II.**

6 **DISCUSSION**

7 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
8 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
9 to file a response, if it "plainly appears from the petition and any attached exhibits that the
10 petitioner is not entitled to relief in the district court." Rule 4, Rules Governing Section 2254
11 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

12 A federal court may not entertain an action over which it has no jurisdiction. Hernandez
13 v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000) (per curiam). Thus, a district court must address
14 the threshold question whether a petition was properly brought under § 2241 or § 2255 in order
15 to determine whether the district court has jurisdiction. Id. A federal prisoner may challenge the
16 execution of his sentence by filing a petition for writ of habeas corpus under 28 U.S.C. § 2241.
17 Zavala v. Ives, 785 F.3d 367, 370 n.3 (9th Cir. 2015). A federal prisoner who wishes to challenge
18 the validity or constitutionality of his federal conviction or sentence must do so by moving the
19 court that imposed the sentence to vacate, set aside, or correct the sentence under 28 U.S.C.
20 § 2255. Alaimalo v. United States, 645 F.3d 1042, 1046 (9th Cir. 2011). "The general rule is that
21 a motion under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner may test the
22 legality of his detention, and that restrictions on the availability of a § 2255 motion cannot be
23 avoided through a petition under 28 U.S.C. § 2241." Stephens v. Herrera, 464 F.3d 895, 897 (9th
24 Cir. 2006) (citations omitted).

25 Nevertheless, a "savings clause" or "escape hatch" exists in § 2255(e) by which a federal
26 prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255
27 to be "inadequate or ineffective to test the validity of his detention." Alaimalo, 645 F.3d at 1047
28 (internal quotation marks omitted) (quoting 28 U.S.C. § 2255); Harrison v. Ollison, 519 F.3d

1 952, 956 (9th Cir. 2008); Hernandez, 204 F.3d at 864–65. The Ninth Circuit has recognized that
2 it is a very narrow exception. See Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003). The
3 remedy under § 2255 usually will not be deemed inadequate or ineffective merely because a
4 prior § 2255 motion was denied, or because a remedy under § 2255 is procedurally barred. Id.
5 The burden is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v.
6 United States, 315 F.2d 76, 83 (9th Cir. 1963). A petitioner may proceed under § 2241 pursuant
7 to the savings clause when the petitioner “(1) makes a claim of actual innocence, and (2) has not
8 had an ‘unobstructed procedural shot’ at presenting that claim.” Stephens, 464 F.3d at 898 (citing
9 Ivy, 328 F.3d at 1060).

10 The petition challenges a sentence imposed by the United States District Court for the
11 Southern District of Georgia. (ECF No. 1 at 3, 6–8.) The Court finds that Petitioner cannot raise
12 such a claim under § 2241 because he has failed to satisfy the requirements to proceed pursuant
13 to the savings clause. Petitioner does not make a claim of actual innocence and does not
14 demonstrate that he has not had an unobstructed procedural shot at presenting that claim. As
15 Petitioner challenges the sentence imposed, he must do so by moving the United States District
16 Court for the Southern District of Georgia to vacate, set aside, or correct the sentence under 28
17 U.S.C. § 2255.

18 **III.**

19 **RECOMMENDATION & ORDER**

20 Based on the foregoing, the undersigned HEREBY RECOMMENDS that the petition for
21 writ of habeas corpus be DISMISSED for lack of jurisdiction.

22 Further, the Clerk of Court is DIRECTED to randomly ASSIGN a District Court Judge to
23 the present matter.

24 This Findings and Recommendation is submitted to the assigned United States District
25 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
26 Rules of Practice for the United States District Court, Eastern District of California. Within
27 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
28 written objections with the court and serve a copy on all parties. Such a document should be

1 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
2 United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28
3 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
4 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
5 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: May 5, 2023

9 /s/ *Eric P. Groj*
10 UNITED STATES MAGISTRATE JUDGE

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